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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re JOSUE H., a Person Coming
Under the Juvenile Court Law.

B275822
(Los Angeles County
Super. Ct. No. MJ23618)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSUE H.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los
Angeles County, Michael Loren Miller, Commissioner.
Affirmed.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Idan Ivri, Deputy Attorney General, for Plaintiff and Respondent.

FACTS AND PROCEDURAL HISTORY

On May 3, 2016, minor defendant Josue H. and his mother engaged in a heated argument in their home. After breaking his bedroom door, Josue proclaimed he would stab his stepfather and stepbrother if they got closer. Josue stated he had a knife. Josue's brother saw a knife approximately four feet away from Josue.

On May 4, 2016, a Welfare and Institutions Code section 602¹ petition was filed alleging that Josue committed two counts of making unlawful criminal threats, in violation of Penal Code section 422, subdivision (a). The juvenile court found both counts true and declared both offenses to be misdemeanors. The court ordered "custody [of Josue] be taken from parents or guardians" because "no reasonable means exist to protect the minor without removal." Josue was ordered suitably placed in an "[o]pen facility." The court

¹ Statutory references are to the Welfare and Institutions Code unless otherwise stated.

also ordered that Josue may not be “held in physical confinement for a period to exceed 16 months.”

DISCUSSION

Josue contends the juvenile court erred by setting a maximum term of physical confinement in the disposition order. He reasons that because he is not entitled to custody credit for time spent in an open placement, the trial court should not have fixed his maximum period of confinement under section 726, subdivision (d)(1). We disagree. Section 726, subdivision (d)(1) requires the court to set a maximum period of confinement when a juvenile is removed from the custody of a parent or guardian, regardless of whether the juvenile is placed in a setting where custody credits may be earned.

Standards Governing Statutory Interpretation

“When interpreting statutory provisions enacted by voter initiative or legislative action, our primary purpose is to ascertain and effectuate the intent of the enactors. [Citation.] To determine this intent, we consider the plain, commonsense meaning of the language used, and construe the language in the context of the overall enactment. [Citations.] When multiple statutory schemes are relevant, we evaluate each scheme and seek to harmonize them to carry out their evinced intent.’ (*Alejandro N. v. Superior*

Court (2015) 238 Cal.App.4th 1209, 1223-1224 (*Alejandro N.*).)” (*In re E.G.* (2016) 6 Cal.App.5th 871, 876.)

The Juvenile Court Properly Set a Maximum Term of Physical Confinement Under Welfare & Institutions Code Section 726

The answer to Josue’s argument is found in the plain language of section 726, subdivision (d)(1). “If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.” (§ 726, subd. (d)(1).) The statute unambiguously requires the juvenile court to set a maximum period of confinement when a juvenile is removed from the custody of a parent or guardian. The statute does not condition the requirement of setting a maximum term on whether the juvenile will earn custody credits after removal.

Josue points to that portion of section 726 which defines physical confinement as limiting the situations in which the juvenile court may fix a maximum period of confinement. “Physical confinement’ means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation,

Division of Juvenile Justice.” (§ 726, subd. (d)(5).) According to Josue, a maximum term of confinement should not be set for his open suitable placement, because it does not qualify as physical confinement under section 726 and he cannot earn custody credits in an open placement.

Subdivisions (d)(1) and (d)(5) of section 726 operate independently and are not in conflict. Without limitation, subdivision (d)(1) requires that a maximum period of confinement be set at disposition when the minor is removed from the custody of a parent or guardian. The court’s obligation to fix a maximum term exists without regard to whether the placement results in physical confinement. California Rules of Court, Rule 5.795(b), is in accord: “If the youth is declared a ward under section 602 and ordered removed from the physical custody of a parent or guardian, the court must specify and note in the minutes the maximum period of confinement under section 726.”

On the other hand, subdivision (d)(5) of section 726 speaks to the types of placements which constitute physical confinement. (See *In re Randy J.* (1994) 22 Cal.App.4th 1497, 1506 [“[t]he plain language of section 726 does not include nonsecure placements”].) The placements identified in subdivision (d)(5) are subject to the maximum period of confinement calculated under subdivision (d)(1). The purpose of subdivision (d)(5) is to define which placements constitute physical confinement, rather than limiting the situations in which subdivision (d)(1) requires the determination of a maximum period of confinement.

The juvenile court complied with its obligation under section 726, subdivision (d)(1) to fix Josue's maximum period of confinement upon his removal from parental custody.

DISPOSITION

The juvenile court's finding at adjudication and disposition order are affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

DUNNING, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.